In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 708

JAMES B. ARMSTRONG, *Petitioner*

v.

WAR CONTRACTS PRICE ADJUSTMENT BOARD

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The findings of fact and opinion of the Tax Court (R. 54-72) are reported at 15 T.C. 625. The *per curiam* opinion of the Court of Appeals (R. 238) is reported at 194 F. 2d 875.

JURISDICTION

The judgment of the Court of Appeals was entered on January 17, 1952 (R. 240). The petition for a writ of certiorari was filed on April 15,

INDEX.

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	3
Argument	4
Conclusion	7

CITATIONS.

CASES:

Brady v. *War Contracts Price Adjustment Board*, 11 T.C. 280	7
Dowell, A. P., Jr. v. *Forrestal*, 13 T.C. 845	7
Edward A. Martin Associates, Inc. v. *War Contracts Price Adjustment Board*, 4 CCF 50970	7
Fine v. *War Contracts Price Adjustment Board*, 9 T.C. 600	7
French v. *War Contracts Price Adjustment Board*, 13 T.C. 276, appeal dismissed, 182 F. 2d 560	7
Greaves v. *War Contracts Price Adjustment Board*, 10 T.C. 886	7
Iverson & Laux, Inc. v. *Forrestal*, 6 T.C. 247	7
Nagel v. *War Contracts Price Adjustment Board*, 4 CCF 50549	7
Rosner v. *War Contracts Price Adjustment Board*, 17 T.C. 445	7
Wolff v. *Macauley*, 8 T.C. 146, 12 T.C. 1217	7

STATUTE:

Renegotiation Act, as amended (Act of February 25, 1944, 58 Stat. 78, 50 U.S.C. App. 1191 Section 403(a)(5)(B)	2, 4

MISCELLANEOUS:

H. Rep. 353, 78th Cong., 1st sess., p. 6	5

1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether excessive profits resulting from commissions upon sales to war contractors are subject to elimination through renegotiation by virtue of Section 403(a)(5)(B) of the Renegotiation Act, as amended, which makes renegotiable all arrangements "any amount payable under which is contingent upon the procurement" of war contracts "or [is] determined with reference to the amount of such" contracts.

STATUTE INVOLVED

Section 403(a)(5)(B) of the Renegotiation Act, as amended (Act of February 25, 1944, 58 Stat. 78, 50 U.S.C. App. 1191) provides in part as follows:

> The term "subcontract" means
>
> * * * * * * *
>
> (B) Any contract or arrangement other than a contract or arrangement between two contracting parties, one of which parties is found by the Board to be a bona fide executive officer, partner, or full-time employee of the other contracting party, (i) any amount payable under which is contingent upon the procurement of a contract or contracts with a Department or of a subcontract or sub-

contracts, or determined with reference to the amount of such a contract or subcontract or such contracts or subcontracts, or (ii) under which any part of the services performed or to be performed consists of the soliciting, attempting to procure, or procuring a contract or contracts with a Department or a subcontract or subcontracts * * *.

STATEMENT

This case involves the renegotiation of petitioner's profits for the years 1943 and 1944. During the years in question, petitioner, performing the customary services of a commission salesman under oral arrangement with several steel companies (R. 56), received as his sole basis of compensation commissions upon sales to companies performing prime or subcontracts with the Government (R. 57-58, 238). His net income for the years 1943 and 1944 was $62,648.17 and $38,876.87, respectively, as compared with average earnings of $9,491.02 per year for the four year period, 1936 through 1939 (R. 61). Of this net income, $56,918.69 in 1943 and $25,233.41 in 1944 was earned upon sales having a war end use (R. 60-61). Upon petitioner's application for redetermination, the Tax Court, in an opinion reviewed by the full Court, found his profits for the years 1943 and 1944 excessive in the amounts of $22,500 and $6,750, respectively (R. 63).

The sole basis of the petition for a writ of certiorari is that ordinary commission salesmen are not within the reach of the Renegotiation Act. The court below rejected this argument in a *per curiam* opinion stating its agreement with the "detailed findings" and "exhaustive opinion" of the Tax Court (R. 238-239). The Tax Court held that the statutory language of Section 403(a)(5)(B), *supra,* "covers the petitioner as a subcontractor and that his commissions under the facts before us are subject to renegotiation" (R. 69).

ARGUMENT

It is clear from the findings of the Tax Court, which are not disputed, that petitioner's compensation was "contingent upon the procurement of" and "determined with reference to the amount of * * * subcontracts" subject to the Renegotiation Act (R. 68),[1] and therefore within the precise terms of Section 403(a)(5)(B). The argument is made, however, that despite coverage by a literal application of the statutory language, the Act's legislative history discloses that Congress intended to subject to renegotiation only the earnings, on war contracts, of so-called war brokers and not those of ordinary commission agents.

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[1] The sales on which he earned his commissions were admittedly war "subcontracts" renegotiable under Section 403(a)(5)(A) (see Pet. 6, 8, 25-6).

We do not quarrel with petitioner's resort to the legislative background for aid in ascertaining the intent of Congress. But when read together with the statutory language, that history makes it plain that Congress never intended to distinguish between so-called war brokers and other agents earning commissions on war contracts. Admittedly, the Congressional debates and reports disclose concern over the unconscionable profits of war-brokers. The evidence falls far short of establishing, however, that only particular types of commission agents were intended to be brought within the Act. In fact, discussion of the evil of exorbitant war brokers' profits is linked without distinction to the earnings of commission agents on war contracts. For example, the Report of the House Committee on Naval Affairs refers in general terms to "manufacturers' agents" and to "amounts being paid to these agents in selling commissions," observes that their "services consisted primarily of ordinary salesmanship," and explains that the proposed statutory provision was "designed to give the departments authority to control the excessive fees and profits being received by these manufacturers' representatives or commission agents, by defining their contracts or arrangements with their principals as 'subcontracts' under the statute dealing with the renegotiation of war contracts" (H. Rep. 353, 78th Cong., 1st Sess., p. 6). It appears, therefore, that

Congress intended to deal with the problem of so-called war brokers by bringing within the scope of renegotiation all commissions on war contracts, thereby subjecting excessive profits to recapture in accordance with the general statutory standards.

There is no evidence whatever, and petitioner does not even contend, that Congress attempted a definition limited to war brokers. Indeed, drawing a line between ordinary commission agents on war contracts and so-called war brokers would have been extremely difficult, if not impossible. Petitioner, nevertheless, would disregard the statutory language and, presumably upon the basis of judicially created standards, have the courts decide in each case whether commissions were paid to a war broker as distinguished from an ordinary commission agent. Authority to renegotiate excessive profits earned as commissions on war contracts would thus depend on the person realizing them—an irrelevant factor in the coverage of other war contractors.

Although the statute has been uniformly administered to apply to brokers like petitioner, no judicial decisions are cited in conflict with the administrative interpretation, which has here been confirmed by the full Tax Court and by the Court of Appeals. Petitioner's argument is so lacking in merit that it apparently has never even been raised in the other cases dealing with the

application of Section 403(a)(5)(B). *Rosner* v. *War Contracts Price Adjustment Board,* 17 T.C. 445; *A. P. Dowell, Jr.,* v. *Forrestal,* 13 T.C. 845; *French* v. *War Contracts Price Adjustment Board,* 13 T.C. 276, appeal dismissed, 182 F. 2d 560 (C.A. 9); *Brady* v. *War Contracts Price Adjustment Board,* 11 T.C. 280; *Wolff* v. *Macauley,* 8 T.C. 146, 12 T.C. 1217; *Greaves* v. *War Contracts Price Adjustment Board,* 10 T.C. 886; *Fine* v. *War Contracts Price Adjustment Board,* 9 T.C. 600; *Iverson & Laux, Inc.* v. *Forrestal,* 6 T.C. 247; *Edward A. Martin Associates, Inc.* v. *War Contracts Price Adjustment Board,* 4 CCF 50970; *Nagel* v. *War Contracts Price Adjustment Board,* 4 CCF 50549.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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